



D-1123

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

RECEIVED

In re Application of)
McGrady, et al.)
Serial No.: 09/428,035)
Confirm. No.: 4121)
Filed: October 27, 1999)
Title: Method of Dispensing and)
Tracking the Giving of Medical)
Items to Patients)
Art Unit 2144 Technology Center 2100
Patent Examiner
Milan S. Kapadia

RECEIVED

AUG 5 - 2004

GROUP 3600

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

REPLY BRIEF OF APPELLANTS

PURSUANT TO 37 C.F.R. § 1.193(b)

Sir:

The Appellants hereby submit their Reply Brief pursuant to 37 C.F.R. § 1.193(b), in triplicate, concerning the above-referenced Application.

REMARKS

The Examiner's Answer ("Answer") dated April 8, 2004 is acknowledged. The Appellants respectfully submit that the rejections set forth in the Answer have already been fully addressed in the 2nd Supplemental Appeal Brief ("Appeal Brief") filed November 4, 2003.

Grouping of Claims

The Answer (at page 2) alleges that

"The appellant's statement in the brief that certain claims do not stand or fall together is not agreed with because Appellant merely points out differences in what the claims cover and does not present arguments as to why each of the claims are separately patentable."

The Appellants respectfully disagree. The Grouping of Claims section in the Appeal Brief is correct. A Notification of Non-Compliance ("Notification") was dated October 20, 2003. Appellants submitted a "Request For Withdrawal Of Holding Of Noncompliance" ("Request") on November 4, 2003 in response thereto. The Request explained how the Office misinterpreted 37 C.F.R. § 1.192(c) and provided reasons why the claims do not stand or fall together. Appellants' remarks in the Request are incorporated herein by reference.

The writing of the Answer has been taken as evidence that the Notification has been withdrawn in response to the Request. Furthermore, because of the Answer, it must be concluded that the Appeal Brief (including the Grouping of Claims section thereof) is in full compliance with 37 C.F.R. § 1.192(c). Thus, Appellants respectfully request that the Answer's incorrect assertions regarding the Grouping of Claims section in the Appeal Brief be disregarded.

Grounds of Rejection

The grounds for rejection set forth in the Answer appear to be identical to the grounds previously presented in the Office Action dated April 22, 2003. Thus, Appellants respectfully submit that the grounds for rejection set forth in the Answer have already been fully addressed in the Appeal Brief. Therefore, please note the Appeal Brief for Appellants' remarks regarding all the issues of record, especially the remarks in support of the patentability of the claims.

Response to Argument

The Answer includes a "Response to Argument" segment beginning on page 14. The "Response to Argument" segment includes comments labeled in sections (A) to (N).

Appellants respectfully submit that the Answer does not address all of Appellants' arguments of record. The Appeal Brief contains more reasons why the claims are allowable. Thus, please note the Appeal Brief for additional arguments regarding all the issues of record.

Appellants herein reply to the comments in Answer sections (A) to (N).

Sections (A), (B), & (C)

The Answer addresses claim 4 beginning on page 14, last paragraph. Claim 4 was rejected as allegedly anticipated by Gombrich. Appellants acknowledge the Answer's admission (e.g., page 20, lines 8-9) that none of the anticipation rejections involving Gombrich is based on inherency.

Because the Office has failed to produce any prior art that actually teaches the recited features and relationships, the Office has apparently tried to pick and choose their own definitions (from a non analogous dictionary) for recited terms in a vain attempt to read on the

claim. Appellants respectfully submit that the Office's reliance on the Microsoft computer dictionary (5th edition, 2002) is improper because it does not constitute prior art. Furthermore, the mentioned Microsoft computer dictionary (of 1994) is not of record. Even if the Microsoft computer dictionary (of 1994) were made of record, its use for the first time in an Answer would be improper because it would constitute an impermissible new ground of rejection (MPEP § 1208.01). Also, neither of the Microsoft computer dictionaries (which were relied upon to support the rejection) is included as a basis for the rejection. Nor has the Office explained how definitions applicable to Microsoft's computers are analogous to the medical art. Why would one having ordinary skill in the medical art look to a dictionary (i.e., the Microsoft computer dictionary) directed to the computer design art? For these many reasons, Appellants respectfully submit that the Answer's reliance upon the Microsoft definitions is improper.

The Answer alleges that Gombrich's bar code reader (48) constitutes a portable "terminal" as defined by Microsoft. As previously discussed, the Microsoft computer dictionary (5th edition, 2002) does not constitute prior art. Nor is the mentioned Microsoft computer dictionary (1994) of record. Regardless, even with Microsoft's definition of "terminal", Gombrich's bar code reader (48) still would not constitute a terminal. For example, the Answer relies on Microsoft's definition of "terminal" as a combination of a video adapter, monitor, and a keyboard. The Answer relies on Gombrich at col. 11, lines 6-15 as teaching that the bar code reader (48) has a keypad (114), and asserts that it is therefore a terminal. However, the Office has failed to point out that the relied upon Microsoft computer dictionary specifically distinguishes a "keypad" from a "keyboard." That is, the definition that the Office attempts to rely upon does not support, and actually teaches away from, Gombrich's bar code reader (48) constituting a terminal.

Furthermore, Gombrich already teaches a terminal (45) and a different device which is a bar code reader (48). Also note Gombrich's distinction of a terminal (45) from a bar code reader (48) in Gombrich's Figure 1. That is, Gombrich distinguishes a "terminal" from a "bar code reader." A dictionary is not necessary to show the distinction (although Microsoft also distinguishes a "terminal" from a "bar code reader"). The Office's attempt to redefine (i.e., modify or teach away from) an explicit teaching of Gombrich (which would destroy the explicit teaching of Gombrich) is legally improper. Also, the argument in the Answer based (improperly) on dictionaries that are not of record, shows that the assertion that the claim is anticipated by Gombrich alone is legally unsupportable.

As previously discussed, the definitions relied on by the Office actually teach away from Gombrich's bar code reader (48) constituting a terminal. Gombrich's bar code reader (48) also does not constitute the recited portable terminal capable of receiving inputted data representative of the giving of a medical item to a patient, capable of storing the representing data in the portable terminal, and capable of transferring the representing data to a computer, as recited in the claim.

The Answer (on page 15) relies on Gombrich at col. 16, lines 3-8 for the asserted teaching that the bar code reader (48) is used for "receiving inputted data representative of the giving of a medical item to a patient." The Appellants respectfully disagree. Gombrich's bar code reader (48) is used to read a bar code (col. 8, lines 56-58). Where does Gombrich teach that the bar code reader (48) reads bar code data representing the giving of a medical item to a patient, as alleged? Where does Gombrich teach inputting representative data? Where does Gombrich teach data associated with giving/medical item/patient, and inputting that data to a portable terminal?

A bar code in Gombrich is read and sent to the computer system (42). The computer system (42) receives the read bar code data (e.g., col. 9, lines 8-40). The relied upon section (col. 16, lines 3-8) of Gombrich teaches that it is the computer system (42), not the bar code reader (48), that determines and "automatically records" that an administration event has occurred. Further support that it is the computer system (42) which "automatically records" may be found in Gombrich at col. 15, line 68 to col. 16, line 2; col. 16, lines 21-24; and col. 14, lines 44-49. It follows that if Gombrich's computer system (42) already automatically records events, then the bar code reader (48) of Gombrich has no need of storing and then transferring the (stored) information to the computer system (42). Where does Gombrich specifically teach inputting data (representative of the giving of a medical item to a patient) to the bar code reader (48), storing this "giving" data, and transferring this "giving" data to the computer system (42)? Gombrich does not teach the recited features, relationships, and steps of claim 4. It follows that Gombrich does not anticipate claim 4.

The Office likewise attempts to provide its own broad definition of a "report" via the previously discussed Microsoft computer dictionary. The Answer alleges that a "report" is defined as "the presentation of information about a given topic, typically in printed form." The Answer alleges that Gombrich's bar code label (53), according to Microsoft, constitutes a "report." The Appellants respectfully disagree. Gombrich's bar code label (53) is shown in Figure 4 and described at col. 8, lines 45-54.

The Office's contrived definition of "report" would (incorrectly) read on any printed information. However, a report is more than just printed information, as alleged. The Office's definition of "report" does not fall within the meaning of "report" as determined by one of

ordinary skill in the medical art, conventional dictionaries, or Appellants' disclosure. A report was previously discussed in the Appeal Brief's "Overview of the Invention" section, and a report (388, 654) is shown in Appellants' Figures 40 and 62. With the Board of Patent Appeals' permission, Appellants are willing to submit definitions of "report" used by those of ordinary skill in the art that contradict the definition asserted in the Answer.

The Office has also failed to point out that the Microsoft computer dictionary, in the definition of "report generator", limits the generation of a "report" to an application (e.g., database management program). Where does Gombrich use such an application to generate the bar code label (53)? That is, the dictionary source that the Office attempts to rely upon actually teaches away from Gombrich's bar code label (53) constituting a report.

Nevertheless, a dictionary is not necessary. Gombrich himself clearly distinguishes a "report" from a "bar code label" (53) (e.g., col. 1, lines 31-33; col. 3, lines 13-20; col. 16, lines 51-59). Gombrich can generate a medical administration record (MAR) and other administrative reports (col. 3, lines 13-20; col. 16, lines 51-59). Gombrich teaches a MAR as being a report. However, none of these reports include "machine readable indicia" as recited in Appellants' claim, especially machine readable indicia corresponding to a patient. Nor are any of Gombrich's reports (MARs) a part of a bar code label (53) (i.e., the alleged report). Gombrich at best refers to a bar code label (53), like all conventional "labels", as an identifier. Again, the Office's attempt to modify an explicit teaching of Gombrich (in a way that is directly contrary to and which would destroy the explicit teaching of Gombrich) is legally improper (and shows that the rejection based on the alleged anticipation of the claim, by the teachings of Gombrich alone, is improper).

The Answer relies on Gombrich for report generation at col. 12, line 66 to col. 13, line 2; col. 14, lines 51-61; and Figure 4. The Appellants respectfully disagree. As previously discussed, Gombrich's bar code label (53) relied on at col. 12, line 66 to col. 13, line 2; col. 14 does not constitute a "report." As previously discussed, Gombrich's reference to a MAR as a report (col. 3, lines 13-20; col. 16, lines 51-59) teaches away from a bar code label (53) constituting a report. Appellants contend that Gombrich's bar code label (53) also cannot constitute the recited report in Appellants' recited steps of "generating a report, wherein the report includes machine readable indicia corresponding to at least one of the patients" and "reading the machine readable indicia on the report corresponding to a patient with a reading device." Gombrich's administrative reports (MAR) don't have "machine readable indicia." Nor do these reports have "machine readable indicia corresponding to at least one of the patients." Nor does Gombrich teach "reading" "machine readable indicia" on a report (MAR) corresponding to a patient with a reading device.

Gombrich does not teach the recited features, relationships, and steps of claim 4. Again, for the many reasons presented herein, and the additional reasons presented in the Appeal Brief, Gombrich cannot anticipate claim 4.

Section (D)

The Answer addresses claim 12 beginning on page 17, last paragraph. Claim 12/7/6/4 was rejected as being anticipated by Gombrich. Claim 12 recites that in step (b) the report includes machine readable indicia corresponding to at least one of the patients (claim 4) and machine readable indicia corresponding to at least one medical item prescribed for the patient (claim 12).

The Answer alleges that Gombrich (at col. 14, lines 7-15) teaches a single machine readable indica that corresponds to both a medical item prescribed for a patient and a patient's name. The Appellants respectfully disagree. The relied upon section of Gombrich does not teach machine readable indicia corresponding to a patient's name. The relied upon section of Gombrich indicates that the "label" can "list" names, such as ingredient names and the patient's name (e.g., Figure 4). However, there is no teaching that the patient's name is in the form of a bar code, as alleged. How would a nurse read the patient's name if it were in the alleged form of bar code? Nor is there a teaching of a bar code corresponding to a patient and a medical item prescribed for the patient, as alleged. Nor is there any teaching of a report including machine readable indicia corresponding to a patient and a medical item prescribed for the patient. Even the Answer admits (on page 9) that Gombrich does not teach the recited features, and, additionally relies on Moulding. Also, in the relied upon section of Gombrich the label is affixed on an IV solution. It is unclear how an IV solution can constitute a report. The Office's interpretation of Gombrich and arguments based on alleged teachings not found in Gombrich, shows that Gombrich cannot anticipate claim 12. Therefore the rejection is improper.

Section (E)

The Answer addresses claim 16 beginning on page 18, last paragraph. Claim 16 was rejected as being anticipated by Gombrich.

As previously discussed, Gombrich does not teach a report, or generating a report having machine readable indicia. It follows that Gombrich cannot teach "reading with a reading device the machine readable indicia on the report."

Section (F)

The Answer addresses claim 17 beginning on page 20. Claim 17 was rejected as being anticipated by Gombrich.

As previously discussed, the relied upon section of Gombrich at col. 14, lines 7-15 does not teach a bar code corresponding to a patient and a medical item prescribed for the patient, as alleged. It follows that Gombrich cannot teach "reading with a reading device the machine readable indicia indicative of the one patient on the report."

Section (G)

The Answer addresses claim 18 beginning on page 21. Claim 18 was rejected as being anticipated by Gombrich.

Gombrich does not teach storing data in a portable terminal representative that a medical item has been used in the medical treatment of a patient, and transferring data representative that the medical item has been used in the medical treatment of the patient from the portable terminal to the computer. The Answer's reliance on Gombrich at col. 11, lines 6-44 for the bar code reader (48) having a memory does not show that Gombrich has the recited features. The Answer alleges that the memory is "capable of storing data representative of giving of a medical item to a patient." Where does Gombrich teach that the memory is capable of storing the data as alleged, especially at col. 11, lines 6-44? Regardless, what a memory may be "capable" of storing, and what it is actually storing are two separate issues. Claim 18 recites "storing data representative that the at least one medical item has been used in the medical treatment of the one patient."

Furthermore, Appellants respectfully submit that the Office misinterprets the claim language. Claim 18 is not directed to "storing data representative of giving of a medical item to a patient" as alleged, but rather "storing data representative that the at least one medical item has

been used in the medical treatment of the one patient." Nor does Gombrich teach transferring the data from the portable terminal to the computer. It follows that Gombrich cannot anticipate claim 18.

Section (H)

The Answer addresses claim 26 beginning on page 21, last paragraph. Claim 26 was rejected as being anticipated by Gombrich. Although claim 26 recites many steps, this section of the Answer only addresses a few features in steps (e) and (g).

Gombrich does not teach storing data (indicative that the medical item has been used in the medical treatment of a patient) in a bedside terminal positioned in generally fixed relation adjacent a bedside area of the patient. The Answer relies on Gombrich at col. 8, lines 26-30 in alleging that Gombrich's terminals (45) might be located remotely, including at a nurse's station. However, Gombrich at col. 8, lines 26-30 actually states "The terminals 45 and the printer devices 46 might be located locally and at remote locations, as required; for example, in the pharmacy, in the laboratory, in the supply room, in X-ray, in radiology, in the billing department, at the nurses' stations, etc." That is, as explained in the Appeal Brief, Gombrich's terminal (45) is located at a non public (e.g., non patient accessible) secured area. Gombrich teaches away from having a "bedside terminal." Even Gombrich's Figure 1 explicitly teaches keeping the terminals (45) outside of patients' rooms. To allege otherwise (which is the current situation in the Answer) is directly contradictory to Gombrich's explicit teaching.

The Answer then improperly asserts that (if Gombrich doesn't teach the features, then) "it would have required no hindsight to locate the terminal as close as possible to the individual, such as a bedside." However, the rejection of claim 26 is based on anticipation, not obviousness.

The question of hindsight is not relevant when anticipation is alleged. Anticipation of claim 26 cannot be based on the need to relocate Gombrich's terminal (45) to a place other than a place specifically taught by Gombrich.

The Answer then tries to stretch the meaning of "adjacent" by alleging that a nurse's station (having a terminal 45) is positioned in generally fixed relation "adjacent" a bedside area of a patient. The Appellants respectfully disagree. One skilled in the art (of hospital stays) would understand that a nurse's station is not adjacent a patient's bedside. One skilled in the art would further recognize that a terminal at a nurse's station is not a recited "bedside terminal."

The Answer then reasons that (if Gombrich doesn't teach the features, and a nurse's station is not a bedside terminal, then maybe) "generally fixed" is unclear. The Answer then builds on this improper assertion and alleges that because "generally fixed" is deemed unclear, the recited claim language can be avoided to permit a portable (non-fixed) device to be used as the basis for rejection. The Appellants respectfully disagree. One skilled in the art would recognize that Gombrich's "portable" bar code reader (48) is not generally "fixed." Even Gombrich teaches that there is a difference between "fixed" and "portable."

The Answer alleges that Gombrich teaches step (e) of claim 26 at col. 14, lines 22-25 and 51-61. However, Gombrich at col. 14, lines 22-25 relates to a pharmacist entering a drug prescription approved for a patient. Gombrich at col. 14, lines 51-61 relates to a record being printed at the pharmacy. These relied upon sections relate to a pharmacist entering a drug prescription approved for a patient. The relied upon sections do not relate to storing data indicating that a medical item has been taken for use by the patient. Rather, in Gombrich the pharmacist (not the patient) still has the medical item.

Nor can Gombrich at col. 14, lines 22-25 and 51-61 correspond to step (g) of claim 26.

These "pharmacy" sections of Gombrich do not relate to storing data in a bedside terminal.

Gombrich's pharmacy, which still has the medical item, cannot store data indicating that the medical item has been used in the medical treatment of the patient.

Step (e) of claim 26 is directed to storing in the data store, data representative that the at least one medical item has been taken for use by the one patient. Step (g) of claim 26 is directed to "storing data . . . indicative that the at least one medical item has been used in the medical treatment of the one patient." Gombrich does not teach steps (e) and (g). For these reasons, and the others explained in the Appeal Brief, Gombrich does not anticipate claim 26.

Section (I)

The Answer addresses claim 1 beginning on page 23. Appellants' remarks in support of the patentability of claim 1 can be found in the Appeal Brief beginning at page 21.

Neither Gombrich nor Moulding, taken alone or in combination, teach or suggest "generating a report, wherein the report includes machine readable indicia corresponding to at least one of the patients and machine readable indicia corresponding to at least one item prescribed for the patient" (step b). As previously discussed, Gombrich does not teach or suggest the recited report. Even the Answer (on page 9) admits that Gombrich does not teach or suggest the recited report.

As explained in the Appeal Brief, Moulding is non analogous art. Moulding also does not teach or suggest the recited report. Moulding's means for recording is directed to recording the characteristics read from a machine readable code (12). Moulding does not teach or suggest generating a report that includes the machine readable code. It would not have been obvious to

one having ordinary skill in the art to have modified Gombrich with the teaching of Moulding to have produced the recited invention.

The table at Answer page 24 is not accurate. For example, Moulding at col. 12, lines 16-22 does not teach or suggest "machine readable indicia corresponding to item prescribed for patient", as alleged. The table is viewed as an admission by the Office that the references do not teach or suggest generating a report that includes both machine readable indicia corresponding to at least one of the patients and machine readable indicia corresponding to at least one item prescribed for the patient.

The relied on section of Gombrich at col. 12, line 66 to col. 13, line 2 (from the table) refers to a bar code (51) (Figure 4). However, the bar code (51) does not correspond to an item prescribed for a patient. Moulding's machine readable code (12) (or the package 10) does not contain the identity of the patient. Neither reference has an article with both machine readable indicia corresponding to a patient and machine readable indicia corresponding to a prescribed item for the patient, especially where the article is a report.

The Office has not met the burden of showing in the prior art a teaching, suggestion, or motivation for combining the references to have produced the recited invention. The Answer (on page 9) alleges that it would have been obvious to expand the system of Gombrich with Moulding's teaching with "the motivation of indicating the characteristics of the medicine contained in a package." However, the indicated reason for the alleged motivation is unclear. Moulding cannot expand the system of Gombrich as alleged, especially to have produced the recited method. Moulding cannot add to the teaching of Gombrich in the manner alleged. The Office admits that Gombrich does not teach or suggest the recited method. It follows that

Moulding cannot alleviate the admitted (and discussed) deficiencies of Gombrich as it does not teach or suggest the recited features and relationships not found in Gombrich. Neither of the references, taken alone or in combination, teach or suggest the recited invention.

The Answer (at page 27, lines 7-9) further admits that "Gombrich failed to expressly teach a single report." The Answer alleges that it would have been obvious to have produced a single report from Gombrich's teaching of a bar code label (53) (i.e., the alleged report) having a bar code (51) and a patient's name (Figure 4) in combination with Moulding's teaching of a package (10) having a machine readable code (12) (Figure 1). The Appellants respectfully disagree.

It would not have been obvious to one of ordinary skill in the art to have combined Gombrich's bar code label (53) with Moulding's package (10) to have produced a report, especially where the report includes both machine readable indicia corresponding to at least one of the patients and machine readable indicia corresponding to at least one item prescribed for the patient. Nor, as previously discussed, does Gombrich's bar code label (53) or Moulding's package (10) even relate to a report. Nor has the Office presented any teaching, suggestion, or motivation for combining diverse features of unrelated teachings. For example, where does the prior art (instead of Appellants' disclosure) suggest the desirability of the combination? Even if it were somehow possible (which it isn't) to combine the references as alleged, the resultant combination still would not have resulted in the recited invention. The Office has not established a *prima facie* showing of obviousness.

Section (J)

As previously discussed, neither Gombrich nor Moulding, taken alone or in combination, teach or suggest a report including both machine readable indicia corresponding to at least one of the patients and machine readable indicia corresponding to at least one item prescribed for the patient. Nor does the relied upon section (col. 14, lines 22-25) of Gombrich teach or suggest reading machine readable indicia (from a report) corresponding to the medical item with the reading device. The Office has not established a *prima facie* showing of obviousness regarding claim 2.

Section (K)

As previously discussed, the references do not teach or suggest the recited report. Nor does the relied upon section (col. 12, line 66 to col. 13, line 2) of Gombrich teach or suggest using a printer to print the report, as alleged. The label (53) (i.e., the alleged report) discussed at the relied upon section, further discussed in Gombrich's col. 8, lines 45-54, and shown in Figure 4, is not the recited report. The Office has not established a *prima facie* showing of obviousness regarding claim 28.

Section (L)

Method claims 19-20 were rejected as being obvious by Gombrich alone. The Answer's comment that Gombrich was not applied under 35 U.S.C. § 102 in response to Appellants' allegation of hindsight reconstruction is unclear.

Step (e) of claim 19 recites "dispensing the at least one medical item from a medical item dispenser responsive to reading machine readable indicia on a report." Step (e) of claim 20 recites "storing in the data store, data representative that the at least one medical item has been

taken for use by the one patient, responsive to the at least one medical item being dispensed from a medical item dispenser." The Answer admits (on pages 12 and 13) that "Gombrich fails to expressly disclose the dispensing of one medical item from a medical item dispenser." The Answer further admits (on page 30, last paragraph) that "Gombrich fails to expressly teach a medical item dispenser." The relied upon section (col. 16, line 67 to col. 17, line 35) of Gombrich also does not teach or suggest a medical item dispenser. In Gombrich a nurse handles the narcotics.

Before a claim may be rejected on the basis of obviousness pursuant to 35 U.S.C. § 103, the Patent Office bears the burden of establishing that all the recited features of the claim are known in the prior art. An assertion (as in the Answer) not based on any evidence in the record lacks substantial evidence support. *In re Zurko*, 258 F.3d 1379, 59 USPQ2d 1693 (Fed. Cir. 2001). *In re Lee*, 277 F.3d 1338, 61 USPQ2d 1430 (Fed. Cir. 2002). The Gombrich reference alone, especially in light of the Answer's admitted deficiencies of a medical item dispenser in the reference, cannot be the sole basis for any legally valid rejection. The mention of McLaughlin and Carter is not part of the rejection, and thus must be disregarded.

Appellants respectfully disagree with the comment that "Appellant appears to view the applied references in a vacuum." Only one reference (i.e., Gombrich) has been applied in the rejection of claims 19 and 20. Appellants view the application of the sole reference in accordance with the law, including *In re Zurko* and *In re Lee*. The Office has not established a *prima facie* showing of obviousness.

Section (M)

Claim 21 depends from claim 19. Claim 21 was rejected as being obvious by Gombrich. Claim 21 recites "comparing the input user data to the data stored concerning authorized users

and determining that the input user data corresponds to one authorized user; wherein the step of dispensing the at least one medical item is carried out responsive to the determination that the input user data corresponds to one authorized user, and further comprising storing in the data store data representative that the at least one medical item has been taken by the one authorized user."

The Answer (at page 32, lines 1-3) alleges that because Gombrich requires the input of user identification (col. 17, lines 6-14) he is "clearly checking" to ensure the user is an authorized user. Appellants respectfully disagree.

Gombrich at the relied upon col. 17, lines 6-14 teaches that the nurse scans her/his badge so that the drug is charged as being located in the nurse's inventory. There is no teaching or suggestion in Gombrich of "comparing" inputted user data to stored data to determine if the nurse is an "authorized user." It follows that Gombrich cannot teach or suggest that the dispensing (step e) of a medical item is carried out responsive to determining that the nurse is an authorized user. The Office has not established a *prima facie* showing of obviousness.

As previously discussed (e.g., claim 19 remarks), the Answer correctly admits that Gombrich does not teach or suggest a medical item dispenser. The Answer (at page 32, lines 13-14) also correctly indicates that the drugs are (physically) moved by a nurse, not by a medical item dispenser. Gombrich's system does not physically move a drug out from a cart and put it into the nurse's inventory. Likewise, after the drug is administered to the patient, the system cannot physically move the (already administered) drug from the nurse's inventory (col. 17, lines 22-23).

Section (N)

The Examiner's indicated "concern" is without merit. The comments in the Answer also misinterpret the meaning of a "general allegation," to which the length of the Appeal Brief can attest. If no applied reference teaches or suggests the recited feature, and the Appellants argue such, then what else is there for Appellants to argue? In other words, how can Appellants "point to any specific distinctions" beyond pointing out that the recited feature is not taught or suggested in the applied prior art?

As previously discussed, the Answer is evidence that the Notification of Non-Compliance (dated October 20, 2003) has been withdrawn. Likewise, it must be concluded that the Appeal Brief is in full compliance with 37 C.F.R. § 1.192(c), and that Appellants' arguments are not merely allegations, as alleged by the Office.

Furthermore, the Appellants are not required to prove patentability, which is what is insinuated in the Answer. Contrarily, it is the Office which has the burden of establishing anticipation or a *prima facie* case of obviousness under the law. Otherwise, the Office is legally required to issue a patent.

CONCLUSION

Each of Appellants' claims specifically recites features, relationships, and steps that are neither disclosed nor suggested in any of the applied prior art. Furthermore, the applied prior art is devoid of any teaching, suggestion, or motivation for combining features of the applied prior art so as to produce the recited invention. For these reasons it is respectfully submitted that all the claims are allowable.

Respectfully submitted,



Ralph E. Jocke
WALKER & JOCKE
231 South Broadway
Medina, Ohio 44256
(330) 721-0000

Reg. No. 31,029